

RESOLUTION NO. 2012.102

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MANAGER TO SEEK CONSENT TO EXTEND THE CLOSING DATE AND INTERSECTION COMPLETION DATE UNDER THE DEVELOPMENT AND DISPOSITION AGREEMENT [C2011-72] BETWEEN THE CITY AND 529 TEMPE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IF CERTAIN CONDITIONS PRECEDENT ARE SATISFIED.

WHEREAS, City and 529 Tempe, LLC (“Developer”) are parties to a Development and Disposition Agreement [C2011-72], dated as of June 30, 2011 (the “Development Agreement”), pursuant to which City agreed to convey to Developer certain real property more particularly described therein (the “Property”); and

WHEREAS, the Development Agreement requires that the closing of the conveyance occur on September 1, 2012 or at such other time as the City and Owner mutually agree in writing; and

WHEREAS, to facilitate the Project, the City reached agreement with the Arizona Board of Regents, on behalf of Arizona State University, to obtain various easements and remnant properties, which is embodied in an Intergovernmental Agreement [C2011-67] (the “ASU Terrace IGA”), that requires the Developer to complete construction of an Intersection (as defined therein), by May 15, 2013; and

WHEREAS, the ASU Terrace IGA expires on May 15, 2013; and

WHEREAS, if Developer does not close on the Property, it will not commence construction of the Intersection in a timely manner as agreed, and will require an extension of the termination date and the deadline for completion set forth in the ASU Terrace IGA; and

WHEREAS, Section 3.6 of the Development Agreement contains a list of action items the Developer aspired to complete to evidence its good faith if it requested any modifications of the Development Agreement, and while the Developer has initiated action on several of these items, none have been completed; and

WHEREAS, extension requests must be approved by Council, and the City Manager has requested that Council authorize him to seek the requisite consent to extend the closing and other dates, and if such approvals are received, to grant extensions to the Developer.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

1. The Manager is hereby authorized to (a) seek any consent or approval required or appropriate as a condition to extending the Closing Date and Intersection completion date set forth in the Development Agreement, and (b) to take any actions he deems necessary or advisable to comply with any conditions imposed for the granting of such extensions, including without limitation obtaining at City expense an independent appraisal of the Property, provided that the Manager shall first obtain Council approval of any expenditure of City funds in excess of \$30,000.

2. If the Manager secures such consents or approvals, then he is further authorized to enter into a letter agreement with the Developer to (a) extend the Closing Date under the Development Agreement for 12 months, to September 1, 2013 (or such other date to which the City is authorized to extend such date), and (b) establish agreement with the Developer regarding any other conditions to the extensions, including without limitation any change in the purchase price for the Property. If the September 1, 2012 closing date already has passed by the time the Manager obtains the requisite consents, then the Manager is authorized to waive any consequence imposed by the City arising solely as the result of the passage of such date. If the conditions of approval required are more extensive, and as a matter of law require Council approval, then the Manager shall cause to be prepared and submitted to Council for consideration an amendment of the Development Agreement setting forth the requisite changes. Nothing in this Resolution shall require the City to approve any such amendment or agree to any additional conditions not presently contemplated by the Development Agreement.

3. If the Manager is not able to secure the consents as described above, then the Developer shall proceed to close within thirty (30) days after notice from City, failing which the Development Agreement shall be deemed terminated without further notice in accordance with Section 3.2 thereof.

4. If the Developer demolishes the building on the Property by November 1, 2012, and satisfies any other conditions of approval, then the Manager is authorized to grant a further extension of the closing date of not more than an additional 6 months to a date no later than March 1, 2014, so long as such additional extension is consistent with conditions imposed by other parties.

5. Until the closing occurs, the City will suspend all other activities with regard to the conveyance of the Property (including without limitation, the planned exchange of property with SRP for relocation of the canal) other than review of plans and other documents submitted for review in accordance with normal City review processes.

6. The Manager is hereby authorized to take such further actions as he deems necessary or appropriate to implement this Resolution, consistent with applicable law and those provisions in the Development Agreement requiring Council approval of amendments and modifications of the Development Agreement.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2012.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY